

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois**

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) Docket No. 13-0498
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Approval of the Energy Efficiency and
Demand-Response Plan Pursuant to
220 ILCS 5/8-103 and 220 ILCS 5/8-104 of the
Public Utilities Act

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**BRIEF ON EXCEPTIONS AND EXCEPTIONS
OF THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois

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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “AG”), pursuant to the schedule established by the Administrative Law Judge’s (“ALJ”), hereby file their Brief on Exceptions and Exceptions to the ALJ’s Proposed Order issued on December 23, 2013 in the above-captioned proceeding.

I. Introduction

The People appreciate the ALJ’s effort to issue a Proposed Order that balances the parties’ interests and addresses dense if not complex issues related to utility-delivered, statutorily required, ratepayer-funded energy efficiency programs. On certain critical issues, however, the Proposed Order inappropriately eliminates all utility risk in the delivery of said programs, and virtually ensures that Ameren Illinois Company (“AIC” or “the Company”) will need to put forth minimal effort in its delivery of programs in order to satisfy Commission-established savings goals that are already reduced due to statutory budget caps.¹ The clearest example of that assessment can be found in the Proposed Order’s approval of Ameren’s proposed level of

¹ See 220 ILCS 5/8-103(d); 8-104(d).

savings goals. The substantial evidence of the record showed that a key factor in reducing Ameren's proposed goals over previous years was an inflated and unexplained CFL cost assumption in its Residential Lighting program that is nearly double that of the cost proposed by Commonwealth Edison Company ("ComEd") in its pending three-year plan filing (Docket No. 13-0495). That conclusion should be rejected in the Commission's final order, with Ameren required to increase its savings goal estimate in conjunction with a significantly reduced CFL cost estimate.

The Proposed Order also errs in its approval of AIC's request to adjust its annual savings goals based on changes in the annual update of efficiency measure values in the Technical Resource Manual ("TRM"). That conclusion merely serves to dis-incent AIC from modifying programs as need be when market and regulatory barriers present themselves during the three-year Plan period.

In addition, rather than impose sensible and needed limits on the utility's requested flexibility in adjusting programs, the Proposed Order imposes what appear to be onerous reporting requirements, the purpose of which is unexplained.

These and other exceptions to the proposed order, along with proposed replacement language, are discussed below.

II. Exceptions

A. Exception No. 1: On Bill Financing

The Proposed Order properly notes that the People view On Bill Financing ("OBF") as a significant tool to allow Ameren to expand pursued goals within the budget limits. PO at 8-9. However, the Proposed Order misses the point of the People's OBF proposal. The People primarily noted that OBF was a successful program design option that, while initially statutorily

funded², should be further explored. AG IB at 35; AG Ex. 2.0C at 10. In a nutshell, the People do not wish to see the door closing on a successful program strategy simply because the original funding requirement has been met. The People, ELPC, and CUB urged the Commission to direct Ameren to pursue OBF in its program as a mechanism to reduce costs.³ AG IB at 35; ELPC IB at 18; CUB Ex. 2.0 at 20. The Proposed Order closes the door on OBF as an option to reduce costs and removes the potential inclusion of a highly successful program mechanism from the portfolio. PO at 8-9.

The Proposed Order misses the point of the OBF discussion in Mr. Mosenthal's testimony and in the People's Initial and Reply Briefs. The People seek to present a mechanism that could allow Ameren to achieve higher goals with the limited funds it has available by supplementing cash rebate offerings. AG IB at 35; AG Ex. 2.0C at 10. The Proposed Order recognizes that Ameren is seeking approval of goals that are significantly adjusted downward from the intended statutory goals articulated in Sections 8-103 and 8-8 104 of the Act as a result of budget limits, but it stops short of providing a solution. PO at 9. Given the downward adjustment at issue, the People note that Ameren should still be otherwise obligated to attempt to maximize the savings that it can reasonably capture within these budget limits. AG IB at 35; AG Ex. 2.0C at 10. Mr. Mosenthal targeted OBF as a mechanism to accomplish this because he "believes that it provides a significant tool for Ameren to expand the goals it pursues within the budget limits." AG Ex. 2.0C at 10. The Proposed Order fails to offer a solution and should, at a minimum, instruct Ameren to adopt OBF as a vehicle to maximize savings.

The Proposed Order focuses heavily on the funding aspect of OBF. PO at 8-9. To this, the People reiterate that the original OBF plan was a separately docketed proceeding comprised

² 220 ILCS 5/16-111.7

³ ELPC encourages the Commission to direct Ameren to implement some form of financing mechanism, be it OBF or another type of program, in order to achieve more energy savings out of a limited budget. ELPC IB at 18.

of several rounds of comments, workshops, and a briefing schedule. *See, generally*, ICC Docket No. 10-0095. The questions related to funding would most appropriately be answered or discussed in a workshop setting in a separate docket such as 10-0095. The People did not seek to hash out each detail of an OBF program. Rather, the People seek to encourage Ameren to find some type of financing program that will serve as a mechanism to reduce program costs. AG IB at 35. With the success of the original OBF program, it seemed to be a natural fit to recommend continuation of OBF. While the People acknowledge that Ameren did expend the Commission-approved original OBF funds under 220 ILCS 5/16-111.7, there is no reason this effective mechanism cannot continue to be used under Sections 8-103 and 8-104 of the Act's programs. Further, Ameren expended considerable ratepayer funds developing the OBF mechanism. AG Ex. 2.0C at 9-10. Now that this investment has been made, ratepayers should benefit from this established program infrastructure through further use of OBF to assist customers with their portion of efficiency investments.

Given the concerns of the AG and other Intervenors related to program goals,⁴ the Commission should modify the Proposed Order to direct Ameren to make OBF available to all program participants as a mechanism to reduce program costs while at the same time enhancing participation rates. For all of these reasons as well as those presented in the People's Initial and Reply Briefs, the People urge the Commission to reject the analysis and conclusions of the Proposed Order and adopt the People's proposal on OBF.

Proposed Language for Exception No. 1

In accordance with the arguments presented above, the Commission analysis and conclusion at pages 8-9 should be modified as follows:

⁴ AG IB at 35; ELPC IB at 18; CUB Ex. 2.0 at 20.

Commission Conclusions

The AG contends OBF provides a significant tool for Ameren to expand the goals it pursues within the budget limits. The AG ~~suggests that~~ encourages Ameren ~~should be to pursuing~~ OBF services in its plan. The AG says it has presented a mechanism that Ameren has already developed with considerable ratepayer funds that, if used, can allow Ameren to achieve higher ~~could somehow account for Ameren's request to have the~~ Commission approve goals than it has proposed, while still complying with the budget limits. ~~that are significantly adjusted downward from the intended statutory goals articulated in Sections 8-103 and 8-104 of the Act as a result of budget limits.~~

ELPC recommends that the Commission direct Staff to conduct and the SAG to review a workshop to evaluate the benefits of OBF and other financing mechanisms. Both AIC and Staff urge the Commission to reject ELPC's proposal. Staff asserts ELPC ignores the fact that additional efforts to increase savings are already underway. Staff also claims the proposal is inconsistent with the Commissions previous finding that that there is no basis for requiring a utility subject to Section 8-103 to procure additional funding outside of the cost recovery mechanism authorized by Section 8-103.

Ameren argues it has already exhausted Commission-approved funding for its OBF program and that OBF is provided for in statutes that are separate from the energy efficiency and demand response statutes, and thus it would be inappropriate to address OBF in this proceeding. AIC also believes Intervenors' recommendations are vague and do not provide sufficient information as to how Ameren's Plan should be modified and any discussion of Ameren's OBF program should occur after the

evaluation report has been filed and the legislation has approved continuing the program per the Act.

In the Commission's view, ~~any suggestion that Ameren should continue OBF in its Plan 3 cannot be adopted as AIC has already exhausted approved funding for the program. The Commission understands the AG's interest in Ameren should~~ continue to pursuing OBF as a feature of its energy efficiency programs to maximize the savings it can achieve within the in light of the reductions in the goals due to budget limits. It is not clear to the Commission what the AG wants with regard to OBF is a successful program option and should continue to be explored in this proceeding. While Ameren did expend the Commission-approved original OBF funds under 220 ILCS 5/16-111.7, there is no reason this effective mechanism cannot continue to be used under Sections 8-103 and 8-104 of the Act's programs. Because these program designs are part of the evidence in this docket, the Commission find that addressing the use of the OBF mechanism as a program feature is a relevant issue to rule on in this docket. Additionally, to the extent ELPC is suggesting workshops related to OBF, it is not clear what benefit such workshops would provide at this time. Ameren is ordered to continue to make OBF available to future program participants, as appropriate, and should coordinate with the SAG on program design details related to the use of OBF. The Commission concludes that Ameren ~~will not be required to~~ should include OBF in its Plan 3 and that the proposal to conduct workshops related to OBF should be rejected at this time.

B. Exception No. 2 -- Adequacy of AIC's Proposed Modified Electric and Gas Savings Goals

The General Assembly made clear in Sections 8-103 and 8-104 of the Act its belief that cost-effective energy efficiency and demand-response measures shall be used to reduce delivery load, which will in turn result in reduced direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure. 220 ILCS 8-103(a), 8-104(a). The Proposed Order, however, takes a minimalist approach to ensuring the delivery of cost-effective energy efficiency to utility customers by holding the Company to minimum goals that already have been reduced by the statutory cost cap in Sections 8-103(d) and 8-104(d) of the Act.

In its approval of Ameren's revised savings goals, the Proposed Order states:

While the parties have discussed several areas of the Plan where increased savings might be achieved, it appears to the Commission that this decision is somewhat hampered by the fact that previous savings goals have only been confirmed by the Commission for PY1 and PY2. AIC also notes that previous years savings used as a comparison are estimated based on different and sometimes changing savings values. The Commission also recognizes that the Act imposes the requirements to comply with the design and implementation of a gas and electric energy efficiency savings Plan on AIC. The Commission expects AIC to work toward the goals expressed in the Act, however, based on the evidence presented, *it appears to the Commission that the modified Plan presented by AIC in its rebuttal testimony, satisfies the requirements of the Act, within the imposed spending limits, therefore the Commission will approve the setting of the modified goals presented by AIC and finds that the savings presented are adequate and comply with the requirements of the Act.*

PO at 23 (emphasis added). This conclusion, if left to stand, would assert Commission disinterest in ensuring that maximum energy savings goals, as modified by the statutory budget cost cap, are achieved during the three-year Plan. (“[t]he modified Plan ... satisfies the requirements of the Act, within the imposed spending limits... .”) This conclusion also belies

substantial evidence in the record that showed that Ameren's estimated Residential lighting program costs were inexplicably high – in fact, nearly *double* that of ComEd's estimated lighting program costs and the existing Technical Resource Manual. The conclusion of the Proposed Order, in short, sets the bar too low, and would serve to inhibit AIC's delivery of cost-effective ratepayer-funded programs.

The substantial evidence of the record supports the AG, NRDC and CUB expert witness opinions that all found the Ameren proposed level of savings to be unnecessarily and unjustifiably low. *See* AG Initial Brief at 12-18; NRDC IB at 6-13; CUB IB at 4-10; ELPC IB at 5-6. AG witness Mosenthal concluded, for example, that higher program costs per rebated CFL bulb, and lower savings claimed than what is indicated in the Commission-approved TRM are key drivers to the lower Ameren savings goal numbers. AG Ex. 1.0 at 11-13. The record evidence shows, for example, that Ameren's assumed cost per kWh cost in its Rebuttal testimony of 28 cents, 26 cents and 25 cents for years 7 through 9, respectively, are almost *double* ComEd's numbers. AIC Ex. 6.1 page 14 of 25. As shown in the table on page 11 of AG witness Mosenthal's Direct testimony, ComEd's estimated PY 7 \$/kWh cost is 14 cents in comparison. AG Ex. 1.0 at 11.

Further, AIC's proposed \$2.31 cost per bulb proposal is still significantly higher than the \$1.58 per bulb cost for standard CFLs in AIC's PY5, as shown in the Company's own exhibits. *See* AIC Ex. 7.0 at 4. The bulk of this increase is related to significantly higher contractor costs, according to the AIC data. *Id.* Ameren indicates this is primarily driven by substantial increases in contractor costs in PY6 to support a large increase in bulb volume from 2.5 million to 4.0 million. *Id.* However, the PY7 plan is to only promote 2.5 million bulbs, consistent with PY5, and then decreases further in future years. In addition, because of the phase in of federal lighting

standards and general maturation of the CFL market during Plan 3 it should be easier for Ameren to reach these levels with lower contractor effort than in PY5. Ameren simply has not explained why the CFL cost per bulb – a main driver in electric program costs, thereby impacting proposed savings goals levels – is priced so much higher than in previous years.

Third, as noted in the AG Initial Brief, the Illinois Technical Reference Manual – developed by both utility and stakeholder experts over the course of the last year – lists an incremental cost of \$1.50 for the retail CFL markdown program – significantly lower than the cost per bulb Ameren’s proposed savings numbers – including its revised Rebuttal numbers adopted in the Proposed Order -- assume.

Fourth, as noted by AG witness Mosenthal, prices for CFLs have come down as compared to previous years, the Company has gained experience marketing the program over several years and the Illinois Power Agency has assumed responsibility for the more expensive specialty CFLs under Section 16-111.5B of the Act. *See* AG Ex. 1.0 at 10-12. All of these factors leave AIC’s proposed Residential lighting costs, and thereby its proposed savings goals, suspect.

As shown at page 13 of the AG Initial Brief, even when AIC’s costs per kwh saved from PY 4 are adjusted to reflect a decrease in savings of 30-40% as a result of changing federal standards, and a lower Net-to-Gross savings ratio, resulting costs are still only half of what Ameren is proposing in Plan 3. *See* AG Initial Brief at 12-13. Mr. Mosenthal’s conservative 0.16 \$/kWh estimate of savings, too, it was shown, align with Commonwealth Edison Company’s (“ComEd”) proposed \$/kwh saved of 0.14 cents in its pending Plan 3 in Docket No. 13-0495. Updating the AIC savings as proposed by the AG (including moving residential CFLs to the IPA efficiency portfolio in years 8 and 9, as discussed below) would change the total

portfolio, cumulative three-year goal from 599,553 MWh to 659,640 MWh, an increase of about 10% over Ameren's proposed goal.

In sum, AIC's proposed energy savings should be adjusted upward to reflect a more fact-based and achievable level, that takes into account past performance and cost and savings estimates, as well as updated federal lighting standards. The Commission should modify the Proposed Order consistent with AG witness Mosenthal's savings goal recommendations, and reject Ameren's unexplained inflated cost and deflated savings estimates.

Proposed Language for Exception No. 2

Accordingly, with the arguments presented above, the conclusion at page 23 of the Proposed Order should be modified as follows:

~~While the decision is somewhat hampered by the fact that previous savings parties have discussed several areas of the Plan where increased savings might be achieved, it appears to the Commission that this goals have only been confirmed by the Commission for PY1 and PY2. AIC also notes that previous years savings used as a comparison are estimated based on different and sometimes changing savings values. The Commission also recognizes that the Act imposes the requirements to comply with the design and implementation of a gas and electric energy efficiency savings Plan on AIC. The Commission expects AIC to work toward the goals expressed in the Act, however, based on the evidence presented, it appears to the Commission that the modified Plan presented by AIC in its rebuttal testimony, satisfies the requirements of the Act, within the imposed spending limits, therefore the Commission will approve the setting of the modified goals presented by AIC and finds that the savings presented are adequate and comply with the requirements of the Act~~

The substantial evidence in the record shows that Ameren's estimated Residential lighting program costs were inexplicably high – in fact, nearly *double* that of ComEd's estimated lighting program costs and the existing Technical Resource Manual. The evidence shows, for example, that higher program costs per rebated CFL bulb, and lower savings claimed than what is indicated in the Commission-approved TRM are key drivers to the lower Ameren savings goal numbers. AG Ex. 1.0 at 11-13. Ameren's assumed cost per kWh cost in its Rebuttal testimony of 28 cents, 26 cents and 25 cents for years 7 through 9, respectively, are almost *double* ComEd's numbers. AIC Ex. 6.1 page 14 of 25. As shown in the table on page 11 of AG witness Mosenthal's Direct testimony, ComEd's estimated PY 7 \$/kWh cost is 14 cents in comparison. AG Ex. 1.0 at 11.

Further, AIC's proposed \$2.31 cost per bulb proposal is still significantly higher than the \$1.58 per bulb cost for standard CFLs in AIC's PY5, as shown in the Company's own exhibits. See AIC Ex. 7.0 at 4. The bulk of this increase is related to significantly higher contractor costs, according to the AIC data. *Id.* Ameren indicates this is primarily driven by substantial increases in contractor costs in PY6 to support a large increase in bulb volume from 2.5 million to 4.0 million. *Id.* However, the PY7 plan is to only promote 2.5 million bulbs, consistent with PY5, and then decreases in further in future years. In addition, because of the phase in of federal lighting standards and general maturation of the CFL market during Plan 3 it should be easier for Ameren to reach these levels with lower contractor effort than in PY5. Ameren simply has not explained why the CFL cost per bulb – a main driver in electric program costs, thereby impacting proposed savings goals levels – is priced so much higher than in previous years.

Second, as noted in the AG Initial Brief, the Illinois Technical Reference Manual – developed by both utility and stakeholder experts over the course of the last year – lists an incremental cost of \$1.50 for the retail CFL markdown program – significantly lower than the cost per bulb Ameren’s proposed savings numbers – including its revised Rebuttal numbers adopted in the Proposed Order -- assume.

Third, as noted by AG witness Mosenthal, prices for CFLs have come down as compared to previous years, the Company has gained experience marketing the program over several years and the Illinois Power Agency has assumed responsibility for the more expensive specialty CFLs under Section 16-111.5B of the Act. See AG Ex. 1.0 at 10-12. All of these factors leave AIC’s proposed Residential lighting costs, and thereby its proposed savings goals, suspect.

Mr. Mosenthal’s conservative 0.16 \$/kWh estimate of savings, too, it was shown, align with Commonwealth Edison Company’s (“ComEd”) proposed \$/kwh saved of 0.14 cents in its pending Plan 3 in Docket No. 13-0495. Updating the AIC savings as proposed by the AG (including moving residential CFLs to the IPA efficiency portfolio in years 8 and 9, as discussed below) would change the total portfolio, cumulative three-year goal from 599,553 MWh to 659,640 MWh, an increase of about 10% over Ameren’s proposed goal. The Commission concludes that AIC’s proposed energy savings should be adjusted upward to reflect a more fact-based and achievable level, that takes into account past performance and cost and savings estimates, as well as updated federal lighting standards. AIC is hereby ordered to file a revised Plan consistent with AG witness Mosenthal’s savings goal recommendations.

C. Exception No. 3 – IPA Program Transfer

At page 62, the Proposed Order rejects the AG proposal to require Ameren to remove its Residential Lighting program from its Section 8-103 efficiency portfolio in years 8 and 9 of the Plan and transfer the program for presentation to the Illinois Power Agency's annual procurement of energy efficiency under Section 16-111.5B of the Act. PO at 62. The Proposed Order appears to struggle with the notion that the Commission has the legal authority in this docket to make such a direction to Ameren, as it notes, "What is not clear to the Commission is how to ensure that programs removed from AIC's Section 8-103 Plan 3 will be included in AIC's Section 16-111.5B procurement plan. There is simply no assurance that third-party vendors will choose to participate." PO at 62.

But this rationale ignores two simple facts. First, the Commission oversees what is included in both Ameren's proposed efficiency portfolio in this docket as well as the IPA's procurement portfolio, which presents cost-effective programs, including expansions of existing Section 8-103 programs, for Commission approval. 220 ILCS 16-111.5B(b); 220 ILCS 5/8-103(f). The Commission certainly has the authority in this docket to require Ameren to remove cost-effective programs from the Plan presented here under Section 8-103 and include it in its presentation to the IPA, when the substantial evidence in the record demonstrates that doing so will increase energy savings during the life of the Plan.

Second, it is undisputed that both the Residential Behavioral and Lighting programs are cost-effective. Under Section 16-111.5B, the utility is required to present to the IPA *all cost-effective efficiency measures for potential inclusion in the IPA portfolio*. 220 ILCS 5/16-111.5B(a)(3)(C). Section 16-111.5B specifically references expansions of Section 8-103 programs. 220 ILCS 5/16-111.5B(a)(2), (a)(3)(C). Ameren most certainly has control over

which programs that have typically been provided under Section 8-103 can be bid into the IPA portfolio. For example, AIC would have an existing (or anticipated) contract for the delivery of Behavior programs, just as it has stated to the Commission in this docket that it intends to contract to provide a Behavior program. For the IPA Procurement process, AIC would simply bid in the electric portion of Behavior program budget.

With respect to CFL lighting, AIC is already delivering, overseeing and administering *a single* CFL program for standards and specialty bulbs, but has bid the specialty lighting piece into the IPA portfolio. Yet, this is still in reality a single program with a single vendor. AG Ex. 1.0 at 15. AIC's suggestion that the vendor is performing double the retailer visits (one for IPA and one for Ameren) is a fiction. It is important to note, too, that both the IPA program and Section 8-103 programs are funded through the Section 8-103 rider. *See* 220 ILCS 5/16-111.5B(a)(6). Thus, while the basis for funding is different statutory provisions, the funding and collection source is the same. The only factor that matters is whether the proposed IPA programs are cost-effective. We know from the evidence in this docket that both CFL and residential Behavior programs are very cost-effective. That fact will not change if the programs are offered through the IPA portfolio.

The substantial evidence in the record shows, too, that requiring this shift in years 8 and 9 will produce greater energy savings. The AG Initial Brief highlighted the available opportunities for additional energy savings the expansion and transfer of these tried and true residential energy efficiency programs to the IPA's Section 16-111.5B portfolio would provide because it would enable Ameren to invest more dollars in Section 8-103 residential programs that create deeper, longer-lived savings while simultaneously freeing up program dollars to invest in commercial and industrial programs that tend to produce relatively greater energy savings. *See* AG Initial

Brief at 18-28. This simple change, at a minimum, would resolve the timing issue referenced in the Proposed Order between IPA procurement of efficiency programs and the three-year filing deadlines set forth in Section 8-103 of the Act. A Commission order that requires Ameren to include the standard CFL and Behavior programs in their package of programs presented to the IPA in years 8 and 9 (2015 and 2016) of this three-year plan is supported by both the NRDC and CUB. *See* NRDC Ex. 1.0 at 21; CUB Ex. 2.0 at 5-6.

Finally, the Proposed Order states that “IIEC has raised an interesting concern regarding the impact of such transfers on the (sic) might result in AIC spending more on energy efficiency plans than would otherwise permitted (sic) under Section 8-103 of the Act.” PO at 61. This argument misses the mark, too. Clearly, the OAG is not advocating that residential program funds be transferred to increase commercial and industrial funding of efficiency programs to a level that exceeded the statutory budget cap set forth in Section 8-103(d). AG witness Mosenthal’s recommendation is designed to take funds to be spent on Residential CFL and Behavioral programs under Section 8-103, spend those funds under Section 16-111.5B and, if appropriate increase spending (within the statutory budget caps) on cost-effective Section 8-103 C&I programs, *as well as other cost-effective Residential programs*, as part of the three-year 8-103 Plan. Contrary to IIEC’s claims, the People are not seeking to take advantage of any budget cap “loophole.” The point is to highlight a glaring inefficiency in AIC’s selection of programs as presented to both the IPA under Section 16-111.5B and the ICC under Section 8-103, its failure to abide by the directive that IPA programs constitute *expansions* of Section 8-103 programs (220 ILCS 5/16-111.5B(a)(2), (a)(3)(C)), and to encourage the Commission to provide direction to Ameren for future procurement and 8-103 Plan presentations – nothing more. Doing so just

happens to create the added benefit of increased energy savings within a Plan that has drastically reduced energy savings in comparison to previous years.

For all of these reasons, the Commission should adopt Mr. Mosenthal's recommendation.

Proposed Language for Exception No. 3

Accordingly, in accordance with the arguments presented above, the Proposed Order at page 62 should be modified as follows:

The Commission has reviewed the parties' positions and notes that it remains committed to the implementation of energy efficiency measures to the greatest extent possible at a reasonable cost. As the parties are well aware, there are arguably inconsistencies between the provisions of Sections 8-103 and 16-111.5B of the Act, which are intended to encourage cost-effective energy efficiency programs. Unfortunately, the Commission is not in a position to fully resolve all of the inconsistencies in those provisions.

As an initial matter, the Commission notes it is too late to consider transferring any programs to 2014 IPA Plan. With regard to subsequent transfers, however, the Commission has some discretion. ~~it is not clear how the Commission effectuate such a transfer.~~ The Commission could clearly remove programs from AIC's Section 8-103 Plan 3. Section 16-111.5B(3)(G) states:

For each expanded or new program, the estimated amount that the program may reduce the agency's need to procure supply.

In preparing such assessments, a utility shall conduct an annual solicitation process for purposes of requesting proposals from third-party vendors, the results of which shall be provided to the Agency as part of the assessment, including documentation of all bids received. The utility shall develop requests for proposals

consistent with the manner in which it develops requests for proposals under plans approved pursuant to Section 8-103 of this Act, which considers input from the Agency and interested stakeholders.

~~What is not clear to the Commission is how to ensure that programs removed from AIC's Section 8-103 Plan 3 will be included in AIC's Section 16-111.5B procurement plan. There is simply no assurance that third-party vendors will choose to participate. Finally, the Commission believes that IEC has raised an interesting concern regarding the impact of such transfers on the might result in AIC spending more on energy efficiency plans than would otherwise be permitted under Section 8-103 of the Act.~~ Section 16-111.5B specifically references expansions of Section 8-103 programs. 220 ILCS 5/16-111.5B(a)(2), (a)(3)(C). Ameren most certainly has control over which programs that have typically been provided under Section 8-103 can be bid into the IPA portfolio. For example, AIC would have an existing (or anticipated) contract for the delivery of Behavior programs, just as it has stated to the Commission in this docket that it intends to contract to provide a Behavior program. For the IPA Procurement process, AIC would simply bid in the electric portion of Behavior program budget.

With respect to CFL lighting, AIC is already delivering, overseeing and administering a single CFL program for standards and specialty bulbs, but has bid the specialty lighting piece into the IPA portfolio. Yet, this is still in reality a single program with a single vendor. AG Ex. 1.0 at 15. AIC's suggestion that the vendor is performing double the retailer visits (one for IPA and one for Ameren) is a fiction. It is important to note, too, that both the IPA program and Section 8-103 programs are funded through the Section 8-103 rider. See 220 ILCS 5/16-111.5B(a)(6). Thus,

while the basis for funding is different statutory provisions, the funding and collection source is the same. The only factor that matters is whether the proposed IPA programs are cost-effective. We know from the evidence in this docket that both CFL and residential Behavior programs are very cost-effective. That fact will not change if the programs are offered through the IPA portfolio.

The substantial evidence in the record shows, too, that requiring this shift in years 8 and 9 will produce greater energy savings. The AG Initial Brief highlighted the available opportunities for additional energy savings the expansion and transfer of these tried and true residential energy efficiency programs to the IPA's Section 16-111.5B portfolio would provide because it would enable Ameren to invest more dollars in Section 8-103 residential programs that create deeper, longer-lived savings while simultaneously freeing up program dollars to invest in commercial and industrial programs that tend to produce relatively greater energy savings. See AG Initial Brief at 18-28. This simple change, at a minimum, would resolve the timing issue referenced in the Proposed Order between IPA procurement of efficiency programs and the three-year filing deadlines set forth in Section 8-103 of the Act. A Commission order that requires Ameren to include the standard CFL and Behavior programs in their package of programs presented to the IPA in years 8 and 9 (2015 and 2016) of this three-year plan is supported by both the NRDC and CUB as well. See NRDC Ex. 1.0 at 21; CUB Ex. 2.0 at 5-6.

Finally, the IIEC's concern that the OAG is advocating that residential program funds be transferred to increase commercial and industrial funding of efficiency programs to a level that exceeded the statutory budget cap set forth in Section 8-103(d) is not persuasive. AG witness Mosenthal's recommendation is

designed to take funds to be spent on Residential CFL and Behavioral programs under Section 8-103, spend those funds under Section 16-111.5B and, if appropriate increase spending (within the statutory budget caps) on cost-effective Section 8-103 C&I programs, as well as other cost-effective Residential programs, as part of the three-year 8-103 Plan. The point is to highlight a glaring inefficiency in AIC's selection of programs as presented to both the IPA under Section 16-111.5B and the ICC under Section 8-103, its failure to abide by the directive that IPA programs constitute *expansions* of Section 8-103 programs (220 ILCS 5/16-111.5B(a)(2), (a)(3)(C)), and to encourage the Commission to provide direction to Ameren for future procurement and 8-103 Plan presentations – nothing more. Doing so just happens to create the added benefit of increased energy savings within a Plan that has drastically reduced energy savings in comparison to previous years. To be clear, these transfers shall not permit any customer group to provide funding that exceeds the statutory budget caps. For all of these reasons, the AG recommendation is adopted.

~~As a result, the Commission declines to adopt the recommendations of the AG and NRDC at this time.~~

D. Exception No. 4: Portfolio Flexibility

The People, in their briefs in this docket, noted that Ameren essentially proposed unlimited flexibility to modify its Plan 3 provided that it is consistent with statutory or regulatory rules. AG IB at 47; AG RB at 27. In an effort to provide some level of accountability to Plan 3, the People proposed a reasonable alternative that triggers automatic goal adjustments *if* Ameren chooses to shift its budgets in such a way that results in a variance from planned annual program budgets of 20% or more. AG IB at 47; AG RB at 28. The People appreciate the conclusion in

the Proposed Order that limitations should be placed on Ameren's flexibility in order to protect ratepayers. PO at 139. The Proposed Order, however, in adopting the position of Staff, does not go far enough to protect ratepayers from potential abuses of the system. While Staff's position grants Ameren close to its desired level of flexibility, the position also imposes a series of draconian reporting requirements to be included in Ameren's quarterly activity reports to the Commission, including providing cost-effectiveness screening results for new measures that Ameren seeks to add to Plan 3 during implementation and explaining how Ameren responds to TRM, NTG, and other changes. AG RB at 30-31. Staff's position, unfortunately, effectively places additional strains on Ameren without necessarily tempering Ameren's proposed unlimited flexibility. The Commission should, therefore, reject the position outlined in the Proposed Order and adopt the People's proposal.

Ameren explicitly "seeks the flexibility to adjust all portfolio elements (program budgets, goals, incentives, etc., in addition to stopping and starting programs) as needed to achieve portfolio success." AIC Ex. 1.0 at 10. As noted by AG witness Mosenthal, this level of flexibility appears to amount to unilateral permission to make these changes as it sees fit without any stakeholder or Commission approval. AG Ex. 1.0C at 29. Although there is agreement among the parties that some level of flexibility should be given to Program Administrators, Staff and Intervenors in this docket each argue that some level of checks and balances must be placed on Ameren's requested level of flexibility. *See* AG IB at 47; Staff IB at 82-83; ELPC IB at 27; CUB IB at 21.

The Proposed Order chooses to adopt Staff's reporting requirements as the check on Ameren's flexibility. PO at 138-139. The trouble with Staff's proposal is that it does nothing to ameliorate the People's concerns that Ameren could easily "game the system." AG Ex. 1.0C at

29; AG IB at 47-49. The Act places budget constraints that drastically limit the goals adopted in Plan 3 versus the level of constraint during previous Plan approvals. AG Ex. 1.0C at 29; AG IB at 48. This change in circumstance provides Ameren with an opportunity to shift significant funds from relatively expensive programs to relatively inexpensive programs. AG IB at 48-49. Essentially, under Staff's proposal, Ameren could still be virtually guaranteed to easily meet any approved goal simply by shifting more resources to the cheapest programs. AG RB at 30-31. Because the budget cap constraints prevent Ameren from pursuing all cost-effective efficiency resources in each market, they have significant flexibility to ramp up the least expensive programs. AG IB at 48. Therefore, the reality is simply that Ameren *could* game the system in order to easily meet its goal simply by shifting from more expensive to less expensive programs. AG IB at 48-49. Staff's proposal, as adopted by the Proposed Order, does nothing to prevent this potential abuse from occurring. AG RB at 30. The People previously raised concerns about Staff's proposal, noting that the measures do not go far enough to prevent Ameren from taking advantage of an opportunity to shift resources in such a way as to swap out resources or otherwise "game the system." AG RB at 30.

The Proposed Order also fails to recognize the reasonableness of the People's proposal. The People's proposed limits to Ameren's flexibility *would not prevent* Ameren from acting as it chooses, but rather, shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustments. AG RB at 29-31; AG IB at 47-49; AG Ex. 1.0C at 32. Ameren could also stand to benefit under the People's plan if it is experiencing success with an expensive program and wanted to shift funds into it from a cheaper program. *Id.* Finally, the People's proposed limitation is consistent with the Commission's directions given to

the SAG in Ameren's first Plan order that the stakeholder process should review any program budget shifts where the change is more than 20%. AG IB at 50.

The Proposed Order should also direct Ameren to bring proposed modifications to the SAG for discussion and make an effort to build consensus around the change. AG IB at 50; AG RB at 30. This should happen whether or not the 20% limit is exceeded, but is particularly important for big changes. The SAG has proven to be an effective sounding board to allow various stakeholders to provide input and ultimately help build support for the programs and provide the program administrators with an added level of security in knowing if any stakeholders have major concerns prior to any after-the-fact litigation. *Id.* at 34-35.

As previously noted by the People, the People's proposal does not unfairly restrict Ameren from timely responding to market changes. AG IB at 50; AG RB at 30. The People's proposal simply requires goal adjustments in situations where any program budget shifts would result in a change of more than 20%. The People's proposal does not restrict Ameren's flexibility to respond to market and program changes. Rather, it simply prevents Ameren from using this unfettered flexibility to "game the system." AG IB at 49-51; AG Ex. 1.0C at 29. Finally, SAG would not have the authority to overrule a program administrator decision. AG Ex. 1.0 at 34-35. Rather, the SAG involvement is designed to ensure that all stakeholders are aware of proposed changes and that Ameren has the opportunity to consider differing points of view prior to any final decision, potentially reducing contentious litigation by ensuring all parties reach consensus on the exact amount to modify goals.

CUB also supports the People's proposal, stating that the People's "recommendations strike a balance between providing Ameren with the necessary flexibility to manage the portfolio while still ensuring that the Company administers the programs approved in this Plan in the

manner approved in this Plan filing and comes as close as possible to meeting the statutory annual incremental goals.” CUB IB at 21.

Finally, to the extent the Commission does require any additional reporting to the Commission, the Commission should be clear on the potential effects and impact of this reporting. For example, is the reporting simply for information purposes, must the reports be approved by the Commission, what are the deadlines for reporting, and what are the penalties for failing to report?

For all of these reasons as well as those presented in the People’s Initial and Reply Briefs, the People urge the Commission to reject the conclusions of the Proposed Order and adopt the People’s proposal to limit flexibility such that any shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustments should be adopted by the Commission. Further, the Commission should modify the Proposed Order to make it clear that utilities should continue to bring all proposed program shift proposals to the SAG for input and comment.

Proposed Language for Exception No. 4

In accordance with the arguments presented above, the Commission analysis and conclusion at pages 138-139 should be modified as follows:

Commission Conclusions

The AG and CUB recommend the Commission adopt specific ~~limits~~ conditions on Ameren's flexibility to change its programs and measures. Specifically, they recommend that any shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustment. CUB also supports the AG’s proposal for Ameren to discuss proposed program and budget changes with the SAG.

Ameren opposes the AG and CUB's recommendation. AIC claims the flexibility it seeks is not unlimited because it is still under an obligation to act reasonably and prudently to be able to recover the costs of its energy efficiency and demand response programs. AIC also says if any party disagrees with a change that it makes, that party can petition or seek redress from the Commission.

Staff supports AIC's flexibility request in this regard only if the Commission explicitly requires the following: (1) AIC is directed to prudently respond to changes (e.g., TRM, NTG, market) in the implementation of its programs; (2) AIC is directed to spend all funding to the extent practicable on cost-effective energy efficiency measures in order to exceed the modified savings goals; (3) AIC is directed to avoid over-promoting cost-ineffective measures so as to help ensure participation of these cost-ineffective measures does not exceed expectations; (4) AIC is directed to provide cost-effectiveness screening results in its quarterly ICC activity reports for new measures the Company adds to its Plan during implementation; and (5) AIC is directed to explain how it responds to TRM, NTG, and other changes in its quarterly ICC activity reports it will file with the Commission in this docket.

Staff notes the Commission declined to impose limits on AIC's request for flexibility in previous Plan dockets based on the information available at that time. Staff believes that AIC has not used this flexibility prudently, particularly in the addition of cost-ineffective measures to Plans after the plans were approved.

The parties agree that Ameren should have flexibility to change its programs and measures. The Commission must decide what, if any, restrictions should be placed on Ameren's flexibility. In the past, the Commission has rejected the suggestions that specific restrictions should be placed in AIC's flexibility. It

appears to the Commission that Staff has raised some valid concerns with Ameren's past practices in its exercise of this flexibility. While the Commission does not endorse each issue raised by Staff, the Commission shares some of Staff's concerns regarding Ameren's past practice may impinge on ratepayers receiving the net benefits they deserve.

~~It appears to the Commission that Ameren has identified some potential shortcomings in the limitations proposed by the AG and Staff. Despite these potential shortcomings, the~~ The Commission notes that, as the AG points out, because Plan 3 requires substantial downward goal adjustments based on the specific plan and budget allocations that Ameren has proposed, the level of unlimited flexibility without goal adjustments used in past proceedings may now be inappropriate. The Commission finds that it is necessary to impose some limitations on Ameren's flexibility to protect ratepayers. The Commission believes that Staff's event based limitations are more appropriate than the AG's proposed budget based limitation. The AG presents a reasonable alternative that triggers automatic goal adjustments if Ameren chooses to shift its budgets in such a way that results in a variance from planned annual program budgets of 20% or more. The reality, as noted by the AG, is that Ameren *could* game the system in order to easily meet its goal simply by shifting from more expensive to less expensive programs. Clearly, Ameren is requesting adoption of modified goals specifically based on more spending on expensive programs. To then eliminate this spending without modifying the goals would be inappropriate. Staff's proposal does nothing to prevent this potential abuse from occurring. Under Staff's proposal, Ameren could still be virtually guaranteed to easily meet any approved goal simply by shifting more resources to the cheapest programs. The AG's proposal

provides a certain level of flexibility that is necessary to respond to market and program changes, but does not allow that flexibility to become an overly-broad liability that may foster an ability to “game the system.” As a result, the Commission is compelled to adopt the limitations proposed by ~~Staff~~ the AG. Finally, the Commission notes that utilities should continue to bring all proposed program shift proposals to the SAG for input and comment.

E. Exception No. 5 – Ameren’s Proposal to Adjust Savings Goals to Changes in TRM Values

Another area in which the Proposed Order sides with removing all utility risk in the delivery of efficiency programs can be found at page 151-152, in its adoption of Ameren’s request to continually adjust its Commission-approved savings goals in accordance with changes in measure values as updated in the Technical Reference Manual (“TRM”) and in annual net-to-gross and realization rate evaluations. PO at 151-152. The Proposed Order states:

The Commission believes that based on the evidence presented, it is appropriate to adopt the change proposed by Ameren on this issue, with the additional conditions identified by Staff. The Commission will also require that Ameren file a public version of the spreadsheet that demonstrates the savings forecasted in the approved Plan match the calculated savings in the spreadsheet listing all the measures with the associated IL-TRM measure codes.

The Commission believes that based on the evidence presented, it is appropriate to adopt the change proposed by Ameren on this issue, with the additional conditions identified by Staff. The Commission will also require that Ameren file a public version of the spreadsheet that demonstrates the savings forecasted in the approved Plan match the calculated savings in the spreadsheet listing all the measures with the associated IL-TRM measure codes.

PO at 151-152. The only caveat to Ameren’s request to continually modify its goals is the adoption of Staff’s recommended requirement that: (1) AIC is directed to prudently respond to

changes (e.g., TRM, NTG, market) in the implementation of its programs; (2) AIC is directed to spend all funding to the extent practicable on cost-effective energy efficiency measures in order to exceed the modified savings goals; (3) AIC is directed to avoid over-promoting cost-ineffective measures so as to help ensure participation of these cost-ineffective measures does not exceed expectations; (4) AIC is directed to provide cost-effectiveness screening results in its quarterly ICC activity reports for new measures the Company adds to its Plan during implementation; and (5) AIC is directed to explain how it responds to TRM, NTG, and other changes in its quarterly ICC activity reports it will file with the Commission in this docket. PO at 151.

In a nutshell, AIC is proposing that it be provided with a moving target for the achievement of savings goals, no matter how poorly it might perform. Recognizing the proposal for the terrible public policy that it is, the AG, NRDC and CUB all argued against permitting such a change in the rules established by Section 8-103 and 8-104 of the Act. *See* AG Ex. 1.0 at 40-42; NRDC Ex. 1.0 at 27; CUB Ex. 2.0 at 11-12. This proposal should be soundly rejected by the Commission in its Final Order for several reasons.

First, NTG values can be highly influenced by program administrator actions, such as program mid-course corrections, and this would remove any incentive for utilities to strive for higher NTG values and to make appropriate program changes when NTG values are becoming increasingly low. AG Ex. 1.0 at 40. For example, the utility would be indifferent if their assumed CFL NTG value of 0.44 dropped to 0.05 because its goals would simply be adjusted to accommodate this unfortunate outcome. *Id.*

Instead, the utility should have a clear incentive to forecast likely NTG results and make program changes as necessary to ensure it is not expending resources inappropriately on things

that are largely transformed in the market already. In this scenario, for example, AG witness Mosenthal noted that the utility should raise eligibility requirements, perhaps shift the CFL promotion to LEDs or only specialty bulbs, consider targeted approaches to reach non-free riders, or perhaps discontinue the program altogether. *Id.* Ameren is asking for this sort of flexibility, and with the diverse portfolio of programs and measures it is proposing, it has ample opportunity to make annual modifications to their Plan to accommodate newly determined (but applied only prospectively) NTG values and still meet the Commission-approved goals. Further, while Ameren should anticipate likely shifts in NTG values over time and act on these forecasts, adoption of the proposed NTG framework also ensures that utilities will have 90 days prior to each program year start to make changes once the values are certain. *Id.*

Ameren also proposes that goals be adjusted based on changes to realization rates. This proposal, too, is ill-conceived. First, as noted in the AG Initial Brief, realization rates reflect the ratio of gross savings that a utility has tracked and estimated to the actual estimated gross savings from impact evaluations. This variance in gross savings can come from a number of things, including utility errors in its database, failure to accurately apply the agreed upon TRM values, or other factors *that are generally in control of the utilities and/or their contractors*. As a result, realization rates going forward should be presumed for planning purposes to be 1.0. In other words, from a planning perspective one should assume the savings being tracked in the database are correct based on the established TRM rules and actual program activity. AG Ex. 1.0 at 41.

To the extent an evaluator makes an adjustment to gross savings because they find a variance in the savings, this is simply part of the evaluators job of determining if the savings were counted properly. Because variances between tracked savings and final evaluation numbers can reflect adjustments for factors under the utility's control (e.g., errors, inappropriate

application of the TRM, etc.), the utility should be held accountable for these realization rate adjustments. *Id.*

Allowing Ameren to adjust goals based on updates to the TRM is similarly flawed. Mr. Mosenthal testified that the TRM is a living document, and it is imperative that it go through annual updates to modify any values for which there is now better information, or to add new measures. The TRM and TRM policy dockets⁵ were established, and procedures agreed to, to ensure a timely update process whereby program administrators will know any TRM changes by March 1 of each year, 90 days prior to the beginning of the next program year and use of the next TRM version. *This allows utilities the opportunity to modify plans, shift promotions of measures, incentive levels, etc. as they see fit to manage these known and certain changes.* AG Ex. 1.0 at 41-42. Such changes, however, do *not* require the continuous adjustment of savings goals.

The Proposed Order's point that evaluations are conducted by independent evaluators (page 151) does not justify adopting Ameren's risk-elimination proposal. It is important that the utilities be held to an overall goal and are incented to make appropriate annual adjustments to ensure prudent programs. Because the portfolio is highly diverse and includes numerous programs and hundreds of measures, there is plenty of opportunity for utilities to make these appropriate adjustments and accommodate TRM changes annually. Alternatively, if the utility simply gets to adjust all goals whenever the TRM changes it has no incentive to make appropriate midcourse corrections. For example, if the TRM determined that a measure was saving very little energy and no longer cost-effective, the utility could still simply pursue that measure and get full credit for goals based on the number of measures rebated, even when this is no longer in the ratepayers interest. *Id.* at 42; *See* AG IB at 51-53.

⁵ Docket Nos. 12-0568 and 13-0077, respectively.

The Proposed Order also cites AIC's historical commitment to efficiency programs as yet another reason to permit the constant re-setting of savings goals. PO at 151. But, that commitment and engagement does not justify the elimination of all risk for the utility as it administers its efficiency programs. Incentives must remain for Program Administrators to consistently monitor and, if need be, adjust program components to ensure that these offerings are working best for ratepayers and are triggering maximum energy savings. The General Assembly's inclusion of penalty provisions in Section 8-103 and 8-104 of the Act for failure to achieve savings goals belie the Proposed Order's conclusion that all risk of savings goal achievement should be removed in the Commission's final Plan orders. *See* 220 ILCS 5/8-103(i) and 8-104(i). AIC's request to adjust savings goals as a result of changes to the TRM, realization rates and NTG variables should be rejected.

Finally, it should be noted that the adoption of the Staff-recommended caveats is of questionable value. First, the Order does not indicate whether the reports listed are for informational purposes only, or whether penalties or consequences would ensue for failure to file the listed information. These reporting requirements appear to be onerous and may very well discourage changes to the programs that may be justified. In addition, it is unclear what is meant by the requirement "to avoid over-promoting cost-ineffective measures so as to help ensure participation of these cost-ineffective measures does not exceed expectations." This caveat is vague, and in fact, might invite disinvestment in programs that deliver more robust savings over the longer term.

For all of these reasons, the AIC request to continually update savings goals in response to TRM, net-to-gross and realization rate updates should be rejected.

Proposed Language for Exception No. 5:

Accordingly, in accordance with the recommendation provided above, the Commission should modify the Proposed Order's conclusions at page 151-152 as follows:

~~The Commission believes that based on the evidence presented, it is appropriate to adopt the change proposed by Ameren on this issue, with the additional conditions identified by Staff. The Commission will also require that Ameren file a public version of the spreadsheet that demonstrates the savings forecasted in the approved Plan match the calculated savings in the spreadsheet listing all the measures with the associated IL TRM measure codes.~~

~~The Commission believes that based on the evidence presented, it is appropriate to adopt the change proposed by Ameren on this issue, with the additional conditions identified by Staff. The Commission will also require that Ameren file a public version of the spreadsheet that demonstrates the savings forecasted in the approved Plan match the calculated savings in the spreadsheet listing all the measures with the associated IL TRM measure codes.~~

In light of the arguments presented, the Commission notes that it is important that the utilities be held to an overall goal and are incented to make appropriate annual adjustments to ensure prudent programs. Because the portfolio is highly diverse and includes numerous programs and hundreds of measures, there is plenty of opportunity for utilities to make these appropriate adjustments and accommodate TRM changes annually. Alternatively, if the utility simply gets to adjust all goals whenever the TRM changes it has no incentive to make appropriate midcourse corrections. For example, if the evaluators determined that a measure was saving very little energy and no longer cost-

effective, the utility could still simply pursue that measure and get full credit for goals based on the number of measures rebated, even when this is no longer in the ratepayers interest. See AG IB at 51-53.

While the Commission further acknowledges AIC's historical commitment to efficiency programs, that commitment and engagement does not justify the elimination of all risk for the utility as it administers its efficiency programs. Incentives must remain for Program Administrators to consistently monitor and, if need be, adjust program components to ensure that these offerings are working best for ratepayers and are triggering maximum energy savings. The General Assembly's inclusion of penalty provisions in Section 8-103 and 8-104 of the Act for failure to achieve savings goals belie the Proposed Order's conclusion that all risk of savings goal achievement should be removed in the Commission's final Plan orders. See 220 ILCS 5/8-103(i) and 8-104(i). AIC's request to adjust savings goals as a result of changes to the TRM, realization rates and NTG variables is hereby rejected.

F. Exception No. 6 – Banking of Savings

While the Proposed Order correctly prohibited the Company from banking energy savings between three-year plans, it specifically left the door open for such banking should the Commission permit it in other energy efficiency docket final orders. The Proposed Order concludes:

The Commission recognizes no party opposes the concept of eliminating banking savings from Plan 2 to Plan 3, and that Ameren has already modeled its Plan 3 without accounting for any banked savings achieved or planned from prior Plans. The Commission therefore orders that the Company may not bank savings between Plans but that Ameren Illinois may continue the practice banking for the years within Plan 3 (PY7-9). The Commission notes, however, that this conclusion is subject to the Commission's subsequent treatment of

other utilities' Plans and to the extent the Commission grants other utilities the right to bank in between Plans, the Commission shall afford Ameren Illinois that same right.

PO at 156. Section 8-103(b) was recently modified, consistent with existing Section 8-104(b), to permit banking *within* the electric three year Plan – not *between* Plans. *See* 220 ILCS 5/8-103(b).

Under the doctrine of *expressio unius est exclusio alterius*, which provides that when a statute specifically lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation. *See Town of Normal v. Hafner*, 395 Ill.App.3d 589, 918 N.E.2d 1268 (4th Dist. 2009); *In re C.C.*, 2011 IL 111795, 959 N.E.2d 53 (2011). Clearly, given the General Assembly's specific grant of banking within the three years, but not between the three years, the intent of that amendment was to not include inter-Plan banking within that new grant of permission.

The Commission's Final Order denying banking between plans should make that legal truism clear – not provide for the possibility of permitting such banking “to the extent the Commission grants other utilities the right to bank in between Plans”, as the Proposed Order allows.

Proposed Language for Exception No. 6:

Accordingly, consistent with the arguments presented above, the Commission should modify the conclusions at page 156 as follows:

The Commission recognizes no party opposes the concept of eliminating banking savings from Plan 2 to Plan 3, and that Ameren has already modeled its Plan 3 without accounting for any banked savings achieved or planned from prior Plans. In addition, it must be noted that Section 8-104(b) and the recent amendment to Section 8-103(b), which permit banking *within* a year-year plan

period only, implicitly preclude the Commission from approving inter-Plan banking under the rule of statutory construction *expressio unius est exclusio alterius*, which provides that when a statute specifically lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation. See *Town of Normal v. Hafner*, 395 Ill.App.3d 589, 918 N.E.2d 1268 (4th Dist. 2009); *In re C.C.*, 2011 IL 111795, 959 N.E.2d 53 (2011). The Commission therefore orders that the Company may not bank savings between Plans but that Ameren Illinois may continue the practice banking for the years within Plan 3 (PY7-9). ~~The Commission notes, however, that this conclusion is subject to the Commission's subsequent treatment of other utilities' Plans and to the extent the Commission grants other utilities the right to bank in between Plans, the Commission shall afford Ameren Illinois that same right.~~

III. Conclusion

For all of the reasons stated above and in their Initial and Reply Briefs, the People of the State of Illinois urge the Commission to adopt a Final Order consistent with the recommendations in this Brief.

Respectfully submitted,

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